Supreme Court, U.S.
FILED
06-67 JUL 13 2006
OFFICE OF THE CLERK

NO.

IN THE

Supreme Court of the United States

COY PHELPS,

Petitioner,

v.

COUNTY OF ALAMEDA, C.C. PLUMMER, W. EGGERS, K. UPCHURCH, TWO UNKNOWN U.S. MARSHALS, AND UNKNOWN OTHERS AT THE ALAMEDA COUNTY JAIL SYSTEM,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT [NO. 05-17213]

PETITION FOR WRIT OF CERTIORARI

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Dated: July 13, 2006

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QUESTIONS PRESENTED

I. Whether a federal judge, prosecutor, marshal, and probation officer can escape liability when they conspire with others to incarcerate an unconvicted civilly committed mental patient in a county jail under onerous, inhumane, and oppressive conditions of confinement, in violation of California State laws, solely because of the patients' sincerely held shared religious beliefs;

II. Whether two deputy sheriff officers can be held liable when they handcuff a quiet compliant mental patients' hands behind his back and beat him so severely that the patient has two strokes and is required to endure four years of medical treatment and physical therapy;

III. Whether *Heck* v. *Humphrey*, 512 U.S. 477 (1994) applies to civil commitments; and

IV. Whether an appellate courts' decision on a prior arrest and imprisonment will moot a subsequent arrest and imprisonment.

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PARTIES

All parties to this action are listed in the caption of the case.

CORPORATE DISCLOSURE

There are no corporations involved in this case and no corporate issues.

STATEMENT OF RELATED CASES

The United States District Court has related the following cases:

Phelps v. *Patel, et al.*, District Court No. C-02-2504, Appeals Court No. 05-15578, Supreme Court No. 05-1585; *Phelps* v. *County of Alameda, et al.*, District Court No. C-02-4740, Appeals Court No. 05-17213; *Phelps* v. *Anti Defamation League of B'nai B'rith et al.*, District Court No. C-04-2815, Appeals Court No. 05-17277; *Phelps* v. *Bornstein*, District Court No. C-05-2405; *Phelps* v. *Wieking*, District Court No. C-05-4553; *United States* v. *Phelps*, District Court No. CR-85-0899.

The District Court Order is attached as Appendix F, App. 17a.

OPINIONS BELOW

There are no published cases regarding the matter of this case, however, the court raised the issue of the Ninth Circuit decision of *United States* v. *Phelps*, 283 F.3d 1176 (9th Cir. 2002) which has been made an integral part of this case.

JURISDICTION AND AUTHORITY

This action was filed in California State Superior Court in Alameda County California under 42 U.S.C. § 1983, *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

The case was removed to federal court under 28 U.S.C. § 1442.

This court has jurisdiction under 28 U.S.C. § 2101 and Rules 10-14 of Supreme Court Rules.

STATEMENT OF THE CASE

1. Actual innocence:

   The actual innocence of the petitioner (Phelps) is not contested nor disputed by the government or the courts;

2. Lack of statutory jurisdiction:

   Since Phelps is actually innocent of the 1985 crimes, for which he was charged, the terms of 18 U.S.C. § 4243 cannot be applied to him;

3. Challenge to United States v. Phelps, 283 F.3d 1176 (9th Cir. 2002):

   The court raised the issue of the validity of the decision of the Ninth Circuit United States Court of Appeals;

4. False Arrest:

   Phelps was arrested on a blank warrant without probable cause by two unknown U.S. Marshals

who admitted that they did not know why they were arresting Phelps;

5. False Imprisonment:

Phelps is an unconvicted federal civilly committed mental patient and was incarcerated for a year in a county jail under inhumane, onerous, and oppressive conditions of confinement upon the instructions of the U.S. Marshals;

6. Misconduct of Jail officials:

The officials misclassified Phelps, were indifferent to his medical needs and to his rights, and used excessive force when two deputy sheriff officers handcuffed his hands behind his back and beat him so severely that he suffered two strokes which necessitated four years of medical treatment and intensive physical therapy;

7. Failure to train, supervise, monitor, and control:

Supervisors of the jail were well aware of the historical abuse and mistreatment of the mentally ill and directly, or tacitly, approved the abuse by not taking any corrective action; the district court held that Phelps was entitled to nominal damages on this issue but dismissed the case anyway.

8. County of Alameda Liability:

The county had a custom, policy, and historical practice of allowing civil commitments to be incarcerated in the county jail in violation of California State Law and in allowing the

mentally ill to be abused by deputy sheriff officers.

9. Insufficient Service of Process:

The court alleged that Phelps did not serve the defendants in the action. The defendants were served personally by the civil division of the Alameda County Sheriffs Department.[1]

10. Heck v. Humphrey, 512 U.S. 477 (1994):

The district court raised the issue of Heck and held that a challenge to the case would invalidate the original commitment of 1986.

11. Challenge to the Ninth Circuit opinion:

The Ninth Circuit held that the case was without merit.

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[1] The petitioner believes that he had the defendants served personally by the civil division of the Alameda County Sheriffs Department. He sent the required documents to the sheriffs department and instructed relatives to pay the required fees. However, as stated in his complaint, Officers Upchurch and Eggers repeatedly destroyed his mail. He attempted to file the complaint three times and the officers destroyed the complaint each time. He waited until the officers had taken the day off and then gave the legal document to the officer on duty to be mailed. Then, and only then, did the complaint reach the court.

Subsequently, the officers beat the petitioner causing a stroke. Being transferred from jail to hospital, to another jail (Santa Rita) and then back to the Oakland jail caused the mail to be lost, destroyed, or returned. In addition, the disability of the strokes prevented the petitioner from engaging in any future litigation until he reached the prison and had received competent therapy.

STATEMENT OF THE ISSUES

1. Violation of the First Amendment:

Phelps was arrested solely because he expressed his sincerely held shared religious beliefs, political views, and philosophical ideologies, as related to the scripture of the Christian Holy Bible, on the Internet;

2. Violation of the Fourth Amendment:

The arrest was unreasonable in that there was no warrant, the two Unknown U.S. Marshals did not know why they were arresting Phelps, and Phelps was not engaged in any suspicious or criminal activity.

The imprisonment of Phelps in the County Jail was unreasonable because he was a civil detainee and California State laws prohibited the incarceration of civil detainees in a jail, prison, or other penal institution;

3. Violation of the Fifth Amendment:

Phelps' due process rights were violated when he was wrongfully incarcerated and jail officials did not follow procedures, rules, and training protocols.

The Eighth Amendment violations are made applicable through the Fifth Amendment because Phelps was, at that time, a civil detainee (not a convicted prisoner.)

4. Violation of the Sixth Amendment:

The courts were well aware of the wrongful incarceration but remained aloof and indifferent to the suffering even when Phelps' attorney protested the incarceration.

5. Violation of the Eighth Amendment:

Phelps suffered cruel and unusual punishment when he was incarcerated as a civil detainee and treated worse than convicted prisoners on disciplinary segregation; he was beaten by two deputy sheriff officers who handcuffed his hands behind his back which resulted in two strokes that necessitated four years of medical treatment and physical therapy.

6. Violation of California State Laws:

California State Welfare and Institutions Codes 5200 *et seq.*, 5300 *et seq.* and 7100 *et seq.* explains the rights of mental patients, defines penal and mental institutions, and establishes the parameters of the law (see *Riese* v. *Saint Mary's Hospital*, 209 Cal.App.3d 1303, 271 Cal.Rptr. 199, 209 Cal.App.3d 1303 (1987), California State Government Code 854.2 and 854.3 (Mental institutions defined).

STATEMENT OF THE FACTS

1. The petitioner in this action is a 72 year old unconvicted federal civilly committed mental patient who is incarcerated in federal prison.

2. In 1985 the petitioner was arrested on charges of bombing jew synagogues, jew homes, and other places.

3. The petitioner claimed actual innocence and that he was being framed into prison through an international jew conspiracy.

4. This claim convinced others that he was delusionally insane and on July 31, 1986, a jury acquitted the petitioner with a verdict of not guilty by reason of insanity.

5. In 1992, the government discovered uncontested evidence that the claims of the petitioner (that he was actually innocent and was being framed through an international jew conspiracy) was actually true and that he had not committed the 1985 crimes and that he had never been mentally ill under the law.

6. The government discovered that a private non-profit jew organization was engaged in domestic spying and terrorism against any citizen who expressed any anti-jew sentiment and that agents of the corporation were also Mossad agents of Israel[2], San Francisco Police officers, Federal Bureau of Investigation agents, Bureau of Alcohol, Tobacco, and Firearms agents, and others who worked jointly together in clandestine operations to eliminate those who were anti-zionist.

7. The private corporation, subsequently, admitted guilt in Superior Court for the State of California and paid a financial sanction.

8. Evidence seized from the corporation confirmed that this petitioner was framed by agents of that corporation but the government still would not release the petitioner solely because of his anti-zionist religious beliefs.

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[2] When the records of the Anti Defamation League were seized, the agents that did the actual bombings, and framed Phelps, fled to the Phillipine Islands to avoid arrest. One agent of the ADL was also a Lieutenant of the San Francisco Police Department and was a Central Intelligence Agency Agent as well as a paid agent of the Federal Bureau of Investigation. He worked jointly with Mossad agents who had offices in the ADL business complex. The seized records verified their joint activities.

9. The government still would not release the Petitioner even though his actual innocence was undisputed.

10. In 1997, Dr. Mark Hazelrigg and Dr. Jean Zula saw evidence that the petitioner was actually innocent of the 1985 crimes and that he had never suffered a delusion, and, thusly, recommended the release of the petitioner without formulating any post release conditions;

11. The petitioner went to court but the judge did not like the report because it did not contain any post release conditions and she wanted conditions imposed, so she returned the petitioner to prison for another evaluation for release.

12. The doctors re-examined the petitioner and, again, recommended a release and did not recommend any post release conditions.

13. The judge expressed her disappointment and imposed her own release conditions upon the petitioner and those release conditions were criminal probation conditions taken directly from the criminal probation codes and the United States Sentencing Guidelines.

14. The petitioner appealed the imposition of criminal probation conditions upon an unconvicted civil commitment to the Ninth Circuit United States Court of Appeals on January 12, 1999 (he was released on January 11, 1999.)

15. There was no release condition that prohibited the petitioner from proselytizing his religious beliefs, political views, and philosophical

ideologies on the internet (or by any other method.)

16. The petitioner contracted with an Internet Service Provider (ISP) to publish his Christian website on the Internet for two years and paid the ISP in advance.

17. In March of 2001, the police chief of Lodi, California saw the Christian website and found it to be personally offensive and ordered the ISP to remove the website without obtaining any judicial order or any further investigation.

18. The Lodi police chief discovered that the petitioner was on criminal probation and instructed United States Probation office to arrest the Petitioner because of the offensive religious teachings and commentaries. The chief admitted that the content of the website was not unlawful, but only offended him.

19. Federal Judge Marilyn Patel (a Jew) read a few pages printed from the religious website, and ordered the arrest of the Petitioner without a warrant or probable cause.

20. The petitioner was arrested by two unknown United States Marshals who admitted that they did not possess a warrant of arrest and did not even know why they were arresting the petitioner.

21. The petitioner was taken before a Magistrate and it was discovered that the "warrant" was a blank form with no information on the form and the affidavit to support probable cause merely stated "see attachment" and did not state a charge, or nature of charges, but merely attached a few printed pages from the 74 page

website (which was taken out of context in an attempt to establish probable cause.)

22. The Magistrate did not arraign the Petitioner and refused to hear the case but did not dismiss the action (as he should have) and sent the case to the judge that ordered the arrest.

23. Judge Marilyn Patel did not charge the Petitioner; no nature of charges were given, no plea was entered, no bail hearing conducted, and the petitioner was held without bail and sent to the Alameda County Jail at Oakland, California to await disposition of the case.

24. The attorney for the petitioner protested the incarceration of the petitioner in the county jail because he was an unconvicted civilly committed mental patient and California State law did not allow mentally ill people to be incarcerated.

25. The judge was callously indifferent and stated that she would not interfere with the housing arrangement of the Marshals. (She was previously a California State Judge so she knew California State law.)

26. The U.S. Marshals transported the petitioner to the Alameda County Jail and instructed the receiving officers to place the petitioner in the worse possible place in the jail because of the petitioners' politically incorrect religious beliefs and because the judge was very upset over the religious writings.

27. The receiving officers placed the petitioner in segregation under conditions of confinement worse, and more inhumane, than conditions of

confinement for convicted prisoners on disciplinary segregation.

28. After about 30 days, while in the jail, the petitioner received a copy of a letter that a probation officer had written to Judge Patel in response to a letter she had written to him instructing him to investigate the petitioner, thoroughly, in order to discover some criminal activity that she could use to make the arrest legal by expost facto application.

29. The probation officer replied that he had diligently investigated the petitioner but was unable to discover any criminal activity.

30. The petitioner languished in the county jail for a year and the harsh, atypical, inhumane, and oppressive conditions of confinement caused the petitioner to deteriorate and to decompensate.

31. During the year of incarceration, two deputy sheriff officers (Eggers and Upchurch) entered the cell of the petitioner at 11:30 p.m. one night, and without any provocation, handcuffed the hands of the petitioner behind his back and hit him with their fist and kicked him with their feet and slammed his head against the concrete walls.

32. The unprovoked attack caused the petitioner to suffer a stroke and he was taken to the county hospital for treatment.

33. Eventually, he was transferred to the jail infirmary and received some minimal therapy.

34. The infirmary staff placed the petitioner in onerous and inhumane conditions and when

the petitioner complained, the staff said "this is where we put people we don't like."

35. The petitioner was transferred back to the same county jail and in the same place with the same officers who attacked him and the officers continued their retaliation, harassment, and oppression.

36. The petitioner requested medical attention and he was ignored by the medical staff and the correctional staff.

37. Not only did the petitioner lose his muscular abilities but he also lost a significant amount of hearing and Judge Patel accused the petitioner of "not wanting to hear" the proceedings and continued the proceedings even when the petitioner could not hear what was transpiring.

38. The petitioner was arrested pursuant to 18 U.S.C. § 4243(g) which is a revocation of conditional release provision for failing to comply with a "prescribed regimen of medical, psychiatric, or psychological care and treatment "which has been prepared by the treating doctors at the facility in which the civilly committed person was hospitalized (no regimen was prescribed.)*

39. When the petitioner challenged the charge of "violation of probation" as being

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* The petitioner sued the judge for imposing criminal probation conditions upon an unconvicted civil commitment and alleged that all of the conditions were unconstitutional. The attorney for the judge agreed that the conditions were improper and that the judge had exceeded her authority by imposing criminal probation conditions . . . and recognized that she could not impose any conditions at all. The task of formulating conditions belongs to the treating doctors at the facility (*United States* v. *McAllister*, 225 F.3d 982, 463 F.Supp. 829.)

unconstitutional because he was a civil commitment and "probation" was a punishment (U.S. Sentencing Guidelines, Part B, Chapter 5, Introductory Comments) and civil commitments cannot be punished (*Jones* v. *United States*, 463 U.S. 354 (1983)), the court changed the charge whenever the petitioner challenged a new charge, the court would change the charge to something else.*

40. Finally, the court could not make a charge so the court revoked the conditional release under subsection (f) of 18 U.S.C. § 4243 (which has no revocation provision.)

41. The petitioner sued "unknown" parties but neither the U.S. Probation office nor the U.S. Marshals Service would disclose the identities of the parties involved in the violation of the petitioner's rights.

42. The judge dismissed the "unknown" parties because the parties were not identified by name even though the parties could have been identified through the discovery process.

43. The court, on its own, presented the *Heck* v. *Humphrey* issue stating that the complaint had to be dismissed because it would have invalidated the original 1985 commitment.

44. Petitioner argued that *Heck* did not apply because he was a civil commitment and *Heck* applied only to convicted prisoners; and that *Heck* did not apply to revocation proceedings; and that *Heck* would not have invalidated the original commitment but, rather, would have only returned the petitioner to his status immediately prior to the arrest, which would have been "in custody-on conditional release."

WHY THIS PETITION SHOULD BE GRANTED

Civilly committed mentally ill people cannot be criminally confined in a penal facility with a penal atmosphere (*Foucha* v. *Louisiana*, 504 U.S. 71 (1992); *Jones* v. *United States*, 463 U.S. 354 (1983); *Youngberg* v. *Romeo*, 457 U.S. 307 (1982); *Gomez-Lopez* v. *Ashcroft*, 393 F.3d 882 (9th Cir. 2005); *Jones* v. *Blanas*, 393 F.3d 918 (9th Cir. 2004); *United States* v. *Jain*, 174 F.3d 892 (7th Cir. 1999); *Buzynski* v. *Oliver*, 538 F.2d 6 (1st Cir. 1976); *Lynch* v. *Baxley*, 386 F.Supp. 378 (M.D. Ala. 1974) *affirmed* 744 F.2d 1452, 1458-62 (11th Cir. 1984); California State Welfare and Institutions Codes 6500 *et seq.* and 6600 *et seq.*) County jails are penal institutions (*Gomez-Lopez*, 393 F.3d at 885) and county jails are worse than prisons (*Newman* v. *Alabama*, 466 F.Supp. 628 (M.D. Ala. 1979).) Any government action of confining a person in a facility that worsens his condition is a violation of the Constitution (*Davis* v. *Balson*, 461 F.Supp. 842 (N.D. Ohio 1978).)

The petitioner was arrested in March of 2001. All of the defendants in this action knew that he was not convicted of a crime nor charged with a crime. They all knew that he was a civil detainee and could not be confined in a jail, but they did and the confinement caused the petitioner irreparable injury.

The U.S. Marshals set into motion a chain of events that led to the irreparable injury when they placed the petitioner in the county jail and instructed the receiving officers to confine the petitioner in the worse place in the jail because of the petitioner's politically incorrect religious beliefs. Whenever someone sets into motion a chain of events which eventually leads to an injury of another, that person need not be involved in the injury, or even have knowledge of the injury, to be liable for that injury. (*Johnson* v. *Duffy*,

588 F.2d 740, 743-44 (9th Cir. 1978); *Motley v. Parks*, 432 F.3d 1072, 1081 (9th Cir. 2005).

The petitioner was taken to segregation on the first floor of the jail and placed under conditions of confinement that were not only worse than convicted prisoners on disciplinary segregation, but were inhumane and oppressive conditions. Without any justification, or provocation, two deputy sheriff officers (defendants Eggers and Upchurch) handcuffed the hands of the petitioner behind his back and beat him causing him to suffer a stroke (and a subsequent second stroke) which necessitated four years of medical treatment and physical therapy. See *Franklin* v. *Aycock*, 795 F.2d 1253 (6th Cir. 1986) (the beating of an inmate is unacceptable regardless of procedures or training manuals); *Gaut* v. *Sunn*, 810 F.2d 923 (9th Cir. 1987) (beating a handcuffed inmate is an outrageous act) *DeShaney* v. *Winnebago County Department of Social Services*, 489 U.S. 189 (1989) (the unconvicted are entitled to a safe and humane therapeutic environment.)

The Ninth Circuit U.S. Court of Appeals ruled that these issues had no merit.

Jones v. *Blanas*, 393 F.3d 918 (9th Cir. 2004) is a similar case. *Jones* was a civil detainee in a California jail and was held in the segregation part of the jail for a year awaiting disposition of his case. The same is true of this petitioner. The conditions of confinement for *Jones* were onerous and inhumane, just as the conditions of confinement for this petitioner. The court held that the sheriff and the county were liable for damages because not only did California State law prohibit the incarceration of civil detainees in a county jail, but also, the right of civil detainees were clearly established.

In this case, as with *Jones*, the county has had a long history of incarcerating civil detainees in punitive segregation under worse conditions than convicted prisoners and the county, and sheriff, has condoned the abuse and mistreatment of civil detainees by deputy sheriff officers. At the Alameda County Jail at Oakland and at Santa Rita, the mentally ill are oppressed, persecuted, abused, and mistreated simply because of their status of being mentally ill. Such is unconstitutional. See *Robinson* v. *California*, 370 U.S. 660, 666-67 (1962) (individuals cannot be punished because of their "status.")

The Sheriff, and the county has failed completely to train, supervise, monitor, and control the actions of deputy sheriff staff in the care and treatment of the mentally ill and exhibited complete indifference to the consequences of their actions by failing to act in response to numerous complaints of constitutional violations. See *Canton* v. *Harris*, 489 U.S. 378, 390 n.10 (1989) (failing to act after learning of pattern of violations is complete indifference.)

The history of the abuses were so entrenched by the county, that the court eventually closed the county jail at Oakland because of those abuses and because the county repeatedly did not take any corrective action to curb the misbehavior of the officers.

The Issue of 283 F.3d 1176:

The court stated that the opinion of the Ninth Circuit Court in the above case precluded a claim in the instant court for false arrest and false imprisonment.

The question is: Does the decision of the Ninth Circuit on the issue of a 1985 arrest and imprisonment moot the issue of a subsequent arrest

and imprisonment in 2001. They are two separate and distinct time periods, yet, the district court concluded that they are the same.

This petitioner challenged the arrest of 2001 and the court held that it was a challenge to the 1985 arrest because the decisions on the second arrest would have affected the imprisonment of the first arrest. (That reasoning and logic escapes this petitioner.)

OVERVIEW:

The petitioner was arrested in 1985 and found not guilty by reason of insanity in 1986.

In 1992, the government discovered evidence that the petitioner was actually innocent of the crimes and identified the people who committed the crimes, but still would not release the petitioner. Instead, the government had the petitioner transferred to another federal prison where none of the staff had information to the actual innocence. The petitioner maintained his innocence but noone would believe him.

In 1997, Dr. Mark Hazelrigg and Dr. Jean Zula discovered the evidence that the petitioner was actually innocent and recommended release conditions. The doctors theorized that since the petitioner did not commit the crimes, he was not under the jurisdiction of the provisions of 18 U.S.C. § 4243 (which requires the defendant to have committed a crime.)

For twelve years, the petitioner had claimed that he had been framed in an international jew conspiracy and everyone considered that claim to be "delusional," and, therefore, met the requirement of being mentally ill under the law.

However, the doctors discovered, and confirmed, that the claims of the Petitioner were true, therefore, he had never been mentally ill under the terms of the statute.

Since he had never been mentally ill, under the law, it would be legally impossible for him to "recover" from that which he did not suffer and no certificate of recovery (required by the statute) would have been appropriate or legal because a certificate would be inconsistent with their findings.

The petitioner argued that the court (in 1999) had a full and fair opportunity to examine all the paperwork and to refuse to release the petitioner but, instead, the court released him. True, the imposition of criminal probation conditions upon the petitioner were unlawful and unconstitutional, but, nevertheless, the court did release the petitioner after examining all the aspects of the case. In fact, the first release hearing was in November of 1997. The judge was dissatisfied with the paperwork at that time and sent the petitioner back to prison for another evaluation to determine release conditions. The doctors did not propose any release conditions. The court expressed disappointment and imposed its own criminal probation conditions upon the petitioner and accepted all the other paperwork as being sufficient and complete.

In January of 1999 the petitioner was released and in January of 1999 the petitioner appealed the imposition of criminal probation conditions upon an unconvicted civil commitment.

Before the court could rule on the matter, the petitioner was arrested in March of 2001 for publishing a Christian religious website on the internet.

The petitioner challenged the arrest.

The petitioner prevailed over the arrest issue but the court sidestepped the arrest by raising the issue of a legal insufficiency of the initial release (no certificate of recovery.)

The court could not re-confine the petitioner under subsection (g) of 18 U.S.C. § 4243 because he did not fail to comply with any lawful release conditions (the probations were unlawful and the judge, subsequently, admitted that she had exceeded her authority) and the only reason that he could be re-committed is if he had failed to comply with a (lawful) release condition.

The court re-committed the petitioner under 18 U.S.C. § 4243(f) (which has no provision for a revocation of release) holding that since there was not a certificate of recovery in the paperwork in 1999, the petitioner should not have been released.

In January of 1999, the petitioner filed an appeal in the Ninth Circuit challenging the imposition of criminal probation conditions upon a released insanity acquittee. The petitioner alleged that the court had no statutory authority to impose conditions. The task of formulating release conditions have been bestowed upon the treating doctors at the facility, not the judge. (*United States* v. *McAllister*, 225 F.3d 982 (8th Cir. 2000). The judge can only approve, or disapprove the proposed conditions.

The Ninth Circuit did not rule on the issues that the petitioner raised in the appeal. Instead, the Ninth Circuit ruled on the issue of legal insufficiency of the 1999 release (which was not raised until the revocation hearing in 2001. AFTER the 2001 arrest.) The court ruled in 283 F.3d 1176 that the petitioner should not have been released in 1999 because a certificate of recovery was omitted from the paperwork. The court held that the statements and declarations of the doctors were not enough. There

must be an official "Certificate of Recovery." The Ninth Circuit ignored the doctors report that they had seen the evidence of actual innocence and that the petitioners' delusions had never been delusions at all. The clerical error trumps any intent, the Ninth Circuit held. **THE INSTANT CASE:**

The district court held that the decision of the Ninth Circuit precluded any challenge of the 2001 arrest even though the two arrests were separated in time by 16 years.

In essence, this is a fruit of the poisonous tree claim. If the petitioner had not been unlawfully placed on criminal probation by the court, there would not have been a second arrest and the petitioner would not have had to appear in court or go to jail. The criminal probation conditions were unlawful and the judge can only approve, or disapprove, the conditions and weigh the legality of those conditions. The decision of the Ninth Circuit in 283 F.3d 1176 was clearly erroneous and this district court's application of that decision to this case was clearly erroneous and caused a miscarriage of justice.

CONCLUSION

The opinion of the Ninth Circuit that this case has no merit is an abuse of discretion and this petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ COY PHELPS
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CERTIFICATION

I, Coy Phelps, certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am the Petitioner in this action and that all the statements made herein were made by me and that all the statements are true and correct according to my best knowledge and belief.

/s/ COY PHELPS
COY PHELPS 78872-011
In Pro Se

Dated: July 12, 2006

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APPENDIX A

FILED
MAY 30 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COY PHELPS, Plaintiff - Appellant, v. COUNTY OF ALAMEDA; et al., Defendants - Appellees.	No. 05-17213 D.C. No. CV-02-04740-PJH MEMORANDUM*

Appeal from the United States District Court
For the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted May 24, 2006**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: PREGERSON, TALLMAN and CALLAHAN, Circuit Judges.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

APPENDIX B

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COY PHELPS,	)	No. C 02-4740 PJH (PR)
	)	
Plaintiff,	)	ORDER OF DISMISSAL
	)	
vs.	)	
	)	
COUNTY OF ALAMEDA, et al.	)	
	)	
	)	
Defendants.	)	
	)	

Plaintiff, a federal prisoner, filed a pro se complaint in state court alleging violations of state law, civil rights claims under 42 U.S.C. § 1983, and claims under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendant marshals removed the case to this court. The court conducted an initial review and dismissed the complaint with leave to amend.

In a footnote in his amended complaint plaintiff pointed out that he is neither a "prisoner" as that term is defined in 28 U.S.C. § 1915A(c), nor is he proceeding in forma pauperis. As a result, neither 28 U.S.C. § 1915(e)(2) nor 28 U.S.C. § 1915A(a) authorizes screening such as the court performed. In an order entered on March 14, 2005, the court accordingly vacated the screening order. The court set a deadline for performing service of 120 days from the date the order was entered. See Fed. R.Civ.P. 4(m) (120 days from filing of complaint to perform service unless court extends time for good cause). Plaintiff

was warned that if he did not obtain service within that time, or provide a sufficient explanation of his failure to do so, the case will be dismissed without prejudice. He has neither filed proofs of service nor has he explained why he has not performed service.

This case is therefore DISMISSED without prejudice. The clerk shall close the file.

SO ORDERED.

DATED: October 4, 2005

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge

APPENDIX C

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COY PHELPS,	)	No. C 02-4740 PJH (PR)
	)	
Plaintiff,	)	JUDGMENT
	)	
vs.	)	
	)	
COUNTY OF ALAMEDA, et al.	)	
	)	
	)	
Defendants.	)	
	)	

A judgment of dismissal without prejudice is entered against petitioner and in favor of respondents. Petitioner shall obtain no relief by way of his complaint.

IT IS SO ORDERED AND ADJUDGED.

DATED: October 4, 2005

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge

APPENDIX D

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COY PHELPS,	No. C 02-4740 PJH (PR)
Plaintiff,	ORDER OF DISMISSAL WITH LEAVE TO AMEND
vs.	(Docs 11, 12 & 13)
COUNTY OF ALAMEDA, CC. PLUMMER, W. EGGERS, K. UPCHURCH, TWO UNKNOWN U.S. MARSHALS; and UNKNOWN OTHER EMPLOYEES AT THE ALAMEDA COUNTY JAIL SYSTEM,	
Defendants.	

Plaintiff, a federal prisoner, filed in state court a pro se complaint alleging violations of state law, civil rights claims under 42 U.S.C. § 1983, and claims under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendant marshals removed the case to this court.

BACKGROUND

Plaintiff contends the defendant marshals took him into custody without a warrant. He was brought before a United States Magistrate Judge, where he alleges that the Assistant United States Attorney said he was being detained because he was mentally ill. A district court judge subsequently ordered that he be held. He was confined at the Alameda County Jail. He contends that if he was mentally ill, he should have been hospitalized rather than imprisoned. He asserts that at the jail he was held for one year in disciplinary segregation, without having been found to have violated any rule, under conditions worse than those to which prisoners who are accused of crimes or have been convicted are subjected.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. Id. at 1915A(b)(1)(2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under

the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

1. False arrest

Plaintiff contends that the defendant marshals falsely arrested him when he had committed no crime nor violated any terms of his probation. A claim of unlawful arrest is cognizable under § 1983 for violation of the Fourth Amendment's prohibition against unreasonable search and seizure if the allegation is that the arrest was without probable cause or other justification. Pierson v. Ray, 386 U.S. 547, 555-558 (1967).

United States v. Phelps, 283 F.3d 1176 (9th Cir. 2002), is preclusive. In that case the court upheld Judge Patel's determination that Phelps should be confined, holding that he should never have been released in the first place. Id. at 1184. Therefore, taking him into custody was not without probable cause or other justification. This claim will be dismissed without leave to amend.

2. False imprisonment

A claim for wrongful detention (false imprisonment) absent a cognizable claim for wrongful arrest will not ordinarily state an independent claim under § 1983. See Baker v. McCollan, 443 U.S. 137, 142-145 (1979). Given the determination above that plaintiff was not falsely arrested, and the decision by the Ninth Circuit Court of Appeals that plaintiff was properly subject to detention, this claim will be dismissed without leave to amend.

3. Misclassification

Plaintiff contends that an unnamed classification officer classified him for detention in segregation. Plaintiff has failed to link any defendant with this claim, nor has he alleged any facts which would show that the classification violated his constitutional rights. This claim will be dismissed with leave to amend.

4. Deliberate indifference to a serious medical need

Plaintiff contends that when he arrived at the jail he had nitroglycerine tablets for a heart condition. The tablets were seized and he was not allowed to have them in the cell. Plaintiff has failed to link this allegation with any defendant. Plaintiff also contends that after he had a mild stroke he was left lying on the floor of his cell "nearly all day." He also does not link this claim with a named defendant. These claims will be dismissed with leave to amend.

5. Conditions of confinement

Plaintiff contends that conditions in his segregation cell were inhumane. He was without a mattress for a week, and a television outside his cell was kept on at a loud volume for around twenty hours a day. He was confined to the cell for twenty-three hours a day three days a week, and not let out at all the other four days. This continued for a year. He alleges that he finally had a complete mental breakdown, in which he did not leave his cell at all and stopped eating, showering, or changing clothes. He asserts that there was no response to this on the part of the authorities. Plaintiff has failed to link these conditions with specific defendants. This claim will be dismissed with leave to amend.

6. Excessive force

Plaintiff alleges that defendants Eggers and Upchurch beat him without reason. This is sufficient to state a claim.

7. Interference with access to the court

Plaintiff contends that Upchurch threw away his grievances. There is no constitutional right to file grievances, so a prison official's failure to process grievances, without more, is not actionable under § 1983. See Buckley, 997 F.2d 494, 495 (9th Cir. 1983). This claim will be dismissed with leave to amend.

Plaintiff also asserts that his outgoing mail to the courts was never sent. He alleges that he saw Upchurch throw away a letter he had written to the court, and perhaps implies that this was a regular procedure. This is sufficient to state a claim against Upchurch for the one incident; if plaintiff contends Upchurch threw away other attempts to communicate with the courts, he may allege that in his amendment.

8. Failure to train and supervise

Plaintiff alleges that the County of Alameda and sheriff Plummer have failed to properly train employees in dealing with mentally-ill prisoners and proper treatment of those who are civilly committed. This is sufficient to state a claim.

C. Motions

1. Motion for appointment of counsel

There is no constitutional right to counsel in a civil case. Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district

court only the power to "request" that counsel represent a litigant who is proceeding in forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the courts the power to make "coercive appointments of counsel." Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989).

The court may ask counsel to represent an indigent litigant under § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986).

Plaintiff has been very articulate in explaining and pursuing his claims. Although they may seem fairly complex, he appears to be capable of presenting them. The motion for appointment of counsel (doc 11) will be denied.

2. Motion for stay

Plaintiff asks that this case be stayed to allow him to appeal the removal to the United States Court of Appeals for the Ninth Circuit. He filed such an appeal, and it now has been dismissed by the Ninth Circuit for lack of jurisdiction. The motion for stay (doc 13) will be denied as moot.

3. Motion for change of venue

Plaintiff contends that the Chief Judge of this district is a defendant, and that the undersigned therefore could not be unbiased. This is incorrect. The Chief Judge is not named as a defendant in this case. The motion (doc 12) will be denied.

CONCLUSION

For the foregoing reasons,

1. When the defendants removed this case they indicated on the civil cover sheet a nature of suit code "360, other personal injury." The clerk shall change the nature of the suit code to 555.

2. Plaintiff's motions for appointment of counsel (doc 11), for a change of venue (doc 12), and to stay proceedings (doc 13) are DENIED.

3. Plaintiff's claims for false arrest and false imprisonment are DISMISSED without leave to amend. His claims of misclassification, deliberate indifference to a serious medical need, inhumane conditions of confinement, and interference with access to the courts are DISMISSED with leave to amend, as indicated above, within thirty days from the date of this order. The amended complaint must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.), cert. denied, 113 S. Ct. 321 (1992); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987); London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of these claims.

4. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal

of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

SO ORDERED.

DATED: September 30, 2003.

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge

APPENDIX E

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OCT
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN V. RYAN (CSBN 118321)
United States Attorney
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Attorneys for Federal Defendants
"Two Unknown U.S. Marshals"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

COY PHELPS,	)	No. C 02-4740 JCS
	)	
Plaintiff,	)	NOTICE OF REMOVAL
v.	)	
	)	
COUNTY OF ALAMEDA,	)	
CC. PLUMMER, W.	)	
EGGERS, K. UPCHURCH,	)	
TWO UNKNOWN U.S.	)	
MARSHALS; UNKNOWN	)	
OTHER EMPLOYEES	)	
AT THE ALAMEDA	)	
COUNTY JAIL SYSTEM,	)	
	)	
Defendants.	)	
	)	

TO: Clerk, Alameda County Superior Court
1225 Fallon Street, Room 109
Oakland, California 94612

Coy Phelps #78872-011
P.O. Box 1600
Butner, North Carolina

PLEASE TAKE NOTICE that on this day Case No. 2002059218 pending in the Alameda County Superior court is being removed to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1441(a), 1441(e) and 2679(a) on behalf of federal defendants identified as "Two Unknown U.S. Marshals." Upon direction by the Attorney General of the United States, the undersigned attorneys hereby present the following facts to the Judges of the United States District Court for the Northern District of California.

Notice of Removal

1. On July 25, 2002, plaintiff Coy Phelps filed a complaint for damages in the Alameda County Superior Court against the County of Alameda, Alameda County sheriff employees, and two unnamed U.S. Marshal deputies. Plaintiff seeks $3 million in damages from defendants. The action arises out of events beginning from March 26, 2001 when he was brought into federal district court by "Two Unknown U.S. Marshals," and events that took place when he was housed at the Alameda County Jail and at the Santa Rita Jail. The causes of action against the "Two Unknown U.S. Marshals" are false arrest and false imprisonment.

2. On August 27, 2002, the United States Attorney's Office was notified of this action. A copy of the Complaint is attached hereto as Exhibit A, which constitutes the only process or pleading which has

been received. Service has not yet been accomplished upon the United States Attorney's Office.

3. This action must be removed to federal district court on behalf of federal defendants because original jurisdiction lies in a federal forum under 28 U.S.C. § 1331 (civil actions arising under the Constitution, laws or treaties of the United States), 28 U.S.C. § 1345 (civil actions against the United States), including, the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671, et seq., and 28 U.S.C. § 2679(b)(1)(exclusive remedy is against the United States for any action arising from the negligent, wrongful act, or omission of any government employee acting within the scope of his office or employment).

4. A copy of this Notice is being filed with the Clerk of the Alameda County Superior Court. That filing will automatically effect the removal of the action in its entirety to this Court for all future proceedings.

Respectfully submitted,

KEVIN V. RYAN
United States Attorney

By: /s/ Jocelyn Burton .....
JOCELYN BURTON
Assistant United States Attorney
Chief, Civil Division

Dated: September 30, 2002

APPENDIX F

FILED
FEB – 8 2006
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RELATED CASE ORDER

A Notice of Related Cases has been filed that the following cases are related within the meaning of Crim. L.R. 8-1(b):

CR 85-899	**MHP**	**USA -v- Phelps**
C02-2504	**PJH**	**Phelps -v- Judge Marilyn Hall Patel et.al.**
C02-4740	**PJH**	**Phelps -v- County of Alameda et.al.**
C04-2815	**MHP**	**Phelps -v- Anti-Defamation League of b'Naith B'rith et.al.**
C05-2405	**MHP**	**Phelps -v- Bornstein**
C05-4553	**MHP**	**Phelps -v- Wieking**

ORDER

The time for filing a statement to support or oppose the Notice has passed. On the basis of the material submitted to the Court, as the Judge assigned to the earliest filed case, I find that the cases:

[ ] ARE NOT RELATED as defined by Crim. L.R. 8-1(b).

[ ] ARE RELATED as defined by Crim. L.R. 8-1(b). I find, however, that reassignment to me of the action(s) currently assigned to another judge is not warranted.

[✓] ARE RELATED as defined by Crim. L.R. 8-19b). Pursuant to Crim. L.R. 8-1(e), the Clerk of Court is ordered to reassign the later-filed action to the undersigned. Counsel are instructed that all future filings are to bear the initials **MHP** immediately after the case number. All matters presently scheduled for hearing in the reassigned case(s) are vacated and must be renoticed for hearing before the undersigned.

DATED:

/s/
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on the date stated below, I lodged a copy of this order with each judicial officer and I mailed a copy to each counsel of record in the cases listed above.

Richard W. Wieking, Clerk

By: Valerie Kyono
Deputy Clerk

DATED:

Copies to: Courtroom Deputies
Case Systems Administrators
Counsel of Record
Entered into Assignment Program:
(date)